ATCHIC MERGY COMMISSION

S ... 1 ...

EXPORT LICENSING POLICY TOWARD CUBA

### Neport to the General Hanager by the Director of Licenning and Regulation

#### FURPOSE

THIS DOCUMENT HAS BEEN DECLASSIFIED UNDER THE PROVISIONS OF EO 12958, DATED 4/17/95 By Authority of 2635 (Declassification Authority/Number) Date of Declassification 3/5/07

1. To consider modifying the Commission's licensing regulations and licensing policy toward Cuba to reflect consistency with the recent export restrictions announced by the U. S. Department of Commerce with respect to commodities under that agency's licensing jurisdiction.

#### <u>SUMARY</u>

2. On October 19, 1960, the U. 3. Department of Commerce announced changes in its licensing regulations and licensing policy toward Cuba which and the effect of embargoing all exports to Cuba except foodstuffs, medicinals, pharmaceutical preparations, surgical, hospital, medical and dental supplies and other related equipment. The ASC staff has been informed that this action was taken by the Secretary of Commerce in consultation with the Under Secretary of State and with the President.

3. Inserve as the Atomic Energy Commission has export licensing jurisdiction with respect to byproduct and source materials, it is appropriate that the Commission consider modifying its regulations and export licensing policies toward Cuba to take into account the announced policy of the U. S. Government toward Cuba. The Department of State has informed the Commission staff that such action by the Commission would be in the national interest. Correspondence with the Department of State on this matter is attached as Appendices A-1 thru A-5.

The following are pertiment excerpts from the memoranda received from the Department of State:



"In announcing the embargo, the Department of State explained я. that the step was reluctantly taken by the United States 'in order to carry out the responsibility of this Government to defend the legitimate economic interests of the people of this country against the discriminatory, aggressive and injurious economic policies of the Castro regime.' We were careful to base the decision on trade rather than any other grounds so as to make it clear the decision is within the sovereign competence of the United States Government." b. "We do not believe the existing Agreement for Cooperation deprives the Commission of its statutory power to deny a license in a particular case on appropriate grounds. In view of the Agreement, however, any export control action and announcement should parallel that taken in connection with the International Wheat Agreement, namely, a withdrawal of the existing blanket license but careful consideration of any special license applications in the light of the Agreement for Cooperation. A more sweeping announcement, ... would create the serious risk of having our action considered as a unilateral abrogation of the Agreement which the Cubans in turn might seize upon to justify unilateral abrogation of other United States - Cuban Agreements.

c. "... we perceive no justification for liberalizing export control procedures vis-a-vis Cuba at this time." (with specific reference to source material exports.)

d. "As to how to apply any such controls to particular cases in the light of the Agreement, it is difficult to lay down a general rule covering all foreseeable cases. It would, however, be proper to refuse to license shipments which, for example, would be put to uses

prohibited

by the Agreement or would not be retained under the jurisdiction of Cuba. There may be other cases in which the Commission believes the Atomic Emergy Act requires it to refuse a license. At this juncture, however, the prudent course would seem to call for handling such cases on an <u>ad hoc</u> basis as they arise and we are prepared to confer with you promptly about any such case that might arise.

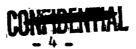
CONFIDENCE

- 3 -

4. The Commission's existing regulations (Section 30.33 of 10 GTR 30, "Licensing of Hyproduct Material") provide that byproduct material having an atomic number 3 through 83, inclusive, may be exported under general license to countries other than those listed as Sub-group "A" (Soviet bloc) countries in Section 371.3 of the Department of Commerce's Comprehensive Export Schedule. The recent Department of Commerce action did not classify Cuba as a Subgroup "A" country; therefore, under existing 4DC regulations, persons lawfully possessing byproduct material in the United States may ship such material having atomic numbers 3 to 83, inclusive, to Cuba.

5. Attached as Appendix "B" is a proposed amendment to 10 CFR 30 which would limit the present general license to Cuba to byproduct material contained in medicinals and pharmaceutical preparations and in devices, applicators, and appliances designed for use in medical diagnosis or therapy. Under the proposed amendment any person proposing to export other byproduct material to Cuba will be required to apply for a specific ABC license. We indicated in the proposed public announcement, attached as Appendix "C", the general policy of the Commission would be to consider such applications in the light of the Agreement for Cooperation between the United States and Cuba. If the proposed use of the byproduct material is found to be within the scope of the agreement for Cooperation the application would be approved. Elicenses would

CONFIDENTIAL



be refused in cases involving proposed shipments where the material would be put to a use prohibited by the agreement or would not be retained under the jurisdiction of Cuba. Other applications would be handled on a case-bycase basis in consultation with the Department of State. In accordance with Section 82 of the Atomic Emergy Act of 1954, as amended, applications will be denied if the export of the material would be inimical to the common defense and security.

6. The proposed revision of 10 CFR 40, "Licensing of Source Material", now before the Commission for action, would establish general licenses authorizing exports of up to three pounds of source material, and unlimited quantities of thorium-containing incandescent gas mantles, to countries other than the Soviet-Sino bloc. Considering the views expressed by the Department of State, particularly in its December 14, 1960, memorandum ("... we perceive no justification for liberalizing export control procedures vis-a-vis Cubs at this time.") it seems appropriate to modify the recommendation set out in ACC-R 18/3 in the following respects:

a. Section 40.90 should be amended by including Cuba among these countries to which the general export licenses will not apply. (page 24 of ASC-R 18/3).

b. The Federal Register Notice (Appendix "B", page 10, of AHC-R 18/3) should be amended to revise the last sentence of the second paragraph to read as follows:

## CUNEREN



of countries to which the gameral licenses to export, established in Section 40.23, will not apply. The latter action is consistent with that taken on October 19, 1960, by the U. S. Department of Commerce with respect to exports to Cuba".

c. The letter to the Chairman, JCAE, and the public announcement regarding the revised 10 CFR 40 should be similarly modified.

7. As indicated in Appendix "C" of this paper (proposed public announcement), the considerations governing the action to be taken on source material export license applications would be similar to those governing byproduct material license applications in that exports of source material for use in medical diagnosis or therapy or for use within the scope of the Agreement for Cooperation will be approved. It is to be noted, however, that the Agreement provides for rather widespread use of radioisotopes whereas, with respect commercial exports of source material, the use must be in connection with

> "Design, construction, and operation of research reactors and their use as research, development, and engineering tools and in medical therapy."

or in connection with "Health and safety problems related to the operation and

use of such reactors"

subject to "Applicable laws, regulations and license requirements of the Government of the United States . . . ".

8. Since it is desirable to take prompt action on applications which are submitted concerning proposed exports to Cuba, it is recommended that the Director, Division of Licensing and Regulation be authorized to act on export license applications in accordance with the policy described in  $\alpha - \frac{1}{7}$ , paragraph 54 above, subject to concurrence by the Division of International

### CONTINUE

# OONEIDENE

9. Inasmuch as the proposed amendment to 10 CFR 30 involves the foreign affairs function of the United States, it is proposed that the Commission find that general notice of proposed rule-making and public procedure thereon are impracticable, unnecessary, and contrary to the public interest.

#### STAFF JUDGMENTS

10. The Division of International Affairs and the Office of the General Counsel concur in the recommendation of this paper. The Office of Public Information concurs in the proposed public announcement.

#### RECOMMENDATION

- 11. The General Manager recommends that the Atomic Energy Commission:
  - a. <u>Approve</u> the amendment to 10 CFR 30 contained in Appendix "B", to become effective upon publication in the Federal Register;

I LIVE DIN

# CONTRACT

- 6 -

- b. <u>Find</u> that general notice of proposed rule-making and public procedure thereon are unnecessary and would be contrary to the public interest;
- c. <u>Approve</u> the issuance of the public announcement attached as Appendix "C";
- d. <u>Authorize</u> the Director, Division of Licensing and Regulation, with the concurrence of the Division of International Affairs, to take action on export license applications, covering proposed shipments of source and byproduct material to Cuba, in accordance  $\alpha r < 7$ , with the policy described in paragraphs 54 above;
- e. <u>Note</u> that the Joint Coumittee will be informed by letter, a draft of which is attached as Appendix "D"; and
- f. Note that approval of the recommondations in ADC-R 18/3, entitled Revision of 10 CFR 40, "Licensing of Source Material", should take account of the modifications listed in paragraph 6, above.

#### ENCLOSURES:

			State Department meno dtd 11-16-60
Appendix	"A=2"		DIA memo to State Department dtd 11-30-60
Appendix	"A-3"	-	State Dept memo dtd 12-3-60
			DIA memo to State Dept dtd 12-9-60
Appendix	"% <b>~5</b> "		State Dept memo dtd 12-14-60
appondix	Bu		Proposed Amendment to 10 CTR 30
appendix	"C"	-	Froposed Fublic Announcement
Appendix	ייכיי		Draft letter to JCAE

#### APPENDIX "B"

#### NOTICE OF RULE-MAKINE

#### Title 10 - Atomic Energy

#### Chapter 1 - Atomic Energy Commission

#### Part 30 - Licensing of Byproduct Material

This amendment to Title 10 CFR, Part 30, is published for the purpose of bringing the Commission's regulations for the export of byproduct material into consonance with the recent changes in the export regulations of the U. S. Department of Commerce with respect to exports to Cuba.

Inasmuch as this amendment involves the foreign affairs functions of the United States, the Commission has found that general notice of proposed rule-making and public procedure thereon are impracticable, unnecessary, and contrary to the public interest.

Effective upon publication in the Federal Register, Title 10, Chapter 1, Part 30, Code of Federal Regulations, "Licensing of Byproduct Material", is hereby amended in the following respects:

1. Paragraph (b) of Section 30.33 is amended to read:

Any licensee may export byproduct material covered by his license to any foreign country except Cuba or countries or areas now or hereafter listed as Subgroup A countries or destinations in  $\frac{5}{8}$  371.3 of the Comprehensive Export Schedule of the United States Department of Commerce (15 CFR 371.3): <u>Provided</u>, That the authority conferred by this paragraph shall apply only to byproduct material having an atomic number from 3 to 83, inclusive.

2. Paragraph (c) of Section 30.33 is deleted and the following new paragraphs (c) and (d) are added:

- (c) Any licensee may export byproduct material covered by his license to Cuba to the extent that the byproduct material is contained in medicinals or pharmaceutical preparations or in devices, applicators, or appliances designed for use in medical diagnosis or therapy: <u>Provided</u>, That the authority conferred by this paragraph shall apply only to byproduct material having an atomic number from 3 to 83, inclusive.
- (d) The Commission may upon application by an interested person issue a license authorizing (1) the export of byproduct A material to a country or area listed as a Subgroup/country or destination in \$371.3 of the Comprehensive Export Schedule of the United States Department of Commerce (15 CFR 371.3), or (2) the export of byproduct material not having an atomic number from 3 to 83, inclusive, or (3) the export to Cuba of byproduct material other than the byproduct material which may be exported under the general license established in Section 30.33(c), above: <u>Provided</u>, That the Commission will not issue a license authorizing such export if, in the opinion of the Commission, the proposed export would be inimical to the common defense and security.

FOR THE ATOMIC ENERGY COMMISSION

Secretary



## APPENDIX "C" DRAFT PUBLIC ANNOUNCEMENT AEC ANNOUNCES REVISED EXPORT LICENSING POLICY TOWARD CUBA

1. Effective immediately, the Atomic Energy Commission is restricting exports to Cuba of radioisotopes and uranium and thorium source materials to medical and other uses within the scope of the atomic energy Agreement for Cooperation between the United States and Cuba.

2. The Commission's action is consistent with the action taken recently by the U. S. Department of Commerce with respect to exports to Guba.

3. Heretofore, any radioisotope subject to AEC control and having an atomic number 3 to 63, inclusive, could be exported from the United States to Cuba under a general authorization in the Commission's regulations. In an amendment to its regulations 10 CFR Part 30 the Commission has now limited this authorization to radioisotopes contained in medicinals, pharmaceutical preparations, or in devices, applicators, or appliances designed for use in medical diagnosis or therapy. Persons proposing to export other radioisotopes to Cuba are now required to apply for specific licenses. The general policy of the Commission will be to consider such applications in the light of the Agreement for Cooperation between the United States and Cuba with respect to atomic energy matters. If the proposed use of the radioisotopes is found by the Commission to be within the scope of the Agreement for Cooperation, the

application will be approved. Such uses include applications in physical and THIS DOCUMENT HAS BEEN DECLASSIFIED UNDER THE PROVISIONS OF EO 12958, DATED 4/17/95

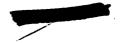
By Authority of \_\_\_\_\_\_5 RN (Declassification Authority/Number) Date of Declassification



biological research, medical therapy, agriculture and industry.

4. Applications will be disapproved in cases involving proposed shipments if the proposed use is prohibited by the agreement or if the material will not be retained under the jurisdiction of Cuba. Other applications will be handled on a case-by-case basis in consultation with the Department of State. In accordance with Section 82 of the Atomic Energy Act of 1954, as amended, an application will be denied if the export of the material would be inimical to the common defense and security.

5. No change in the Commission's source material regulations -- 10 CFK Part 40, Licensing of Source Material -- is involved since those regulations do not currently include any general export licenses. However, the policy of the Commission in taking action on export license applications for shipments to Cuba of uranium or thorium has been modified. Heretofore, and even prior to the existence of the agreement for Cooperation between the United States and Cuba, exports to Cuba of materials containing uranium and thorium have been licensed for various non-nuclear uses. Under the revised licensing policy source material export license applications will be approved if the proposed use is for medical diagnosis or therapy or if the use is found by the Commission to be within the scope of the Agreement for Cooperation. As in the case of radioisotopes, licenses will be refused in cases where the material would be put to a use prohibited by the agreement or would not be retained under the jurisdiction of Cuba. The Department of State will be consulted with respect to other cases. Applications will be denied if it is determined that the export would be contrary to the national interest.



6. Radioisotopes are controlled by the Commission through its regulation 10 CFR Part 30, "Licensing of Byproduct Material". Byproduct Material" is defined in the Atomic Energy Act and in the Commission's regulations as any radioactive material yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear (fissionable) material. In general, byproduct materials are radioisotopes produced in nuclear reactors. The U. S. Department of Commerce controls the export of cyclotron-produced and naturally occurring radioactive isotopes.

7. Uranium and thorium are controlled by the Commission under 10 CFR Part 40, "Control of Source Material". Source material is defined in the regulations as any material containing one-twentieth of one percent (0.05%) or more of uranium, thorium or any combination thereof. Certain compounds of uranium and thorium used as analytical reagents in blood analyses and other medical applications.

8. Pertiment provisions of the Agreement for Cooperation, relating to commercial exports to Cuba of source materials, include, under Article VII:

> "It is contemplated that, as provided in this Article, private individuals and private organizations in either the United States or the Republic of Cuba may deal directly with private individuals and private organizations in the other country. Accordingly, with respect to the subjects of agreed exchange of information as provided in Article III, the Government of the United States will permit persons under its jurisdiction to transfer and export materials, including equipment and devices, to and perform services for the Government of the Republic of Cuba and such persons under its jurisdiction as are authorized by the Government of the Republic of Cuba to receive and possess such materials and utilize such services, subject to:



"(a) The provisions of Article II.

(b) Applicable laws, regulations and license requirements of the Government of the United States and the Government of the Republic of Cuba."

#### Article II provides:

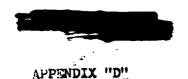
"Restricted Data shall not be communicated under this Agreement, and no materials or equipment and devices shall be transferred and no services shall be furnished under this Agreement to the Government of the Republic of Cuba or authorized persons under its jurisdiction if the transfer of any such materials or equipment and devices or the furnishing of any such services involves the communication of Restricted Data."

Article III provides, in parts

"Subject to the provisions of Article II, the Parties hereto will exchange information in the following fields:

(a) Design, construction, and operation of research reactors and their use as research, development, and engineering tools and in medical therapy.

(b) Health and safety problems related to the operation and use of research reactors."



### DRAFT LETTER TO CHAIRMAN, JCAE

1. The purpose of this letter is to inform the Joint Committee of action taken by the Commission with respect to its export licensing regulations and export policy toward Cuba.

2. Heretofore, byproduct material having an atomic number 3 to 83, inclusive, could be exported to Cuba under a general license set out in Section 30.33(b) of the Commission's regulations (10 CFR 30). The Commission has amended its regulations to limit this authorization to byproduct material contained in medicinals or pharmaceutical preparations or in devices, applicators, or appliances designed for use in medical diagnosis or therapy. Persons proposing to export other byproduct material to Cuba are now required to apply for specific AEC licenses.

3. The general policy of the Commission will be to consider such applications in the light of the Agreement for Cooperation between the United States and Cuba. If the proposed use of the byproduct material is found to be within the scope of the agreement, the application will be approved. Licenses will be refused if the proposed use is prohibited by the agreement or if the material will not be retained under the jurisdiction of Cuba. Other applications will be considered on a case-by-case basis in consultation with the Department of State.

4. The policy of the Commission in taking action on export license applications for proposed source material shipments to Cuba has been similarly modified. Such applications will be approved if the proposed use is for medical diagnosis or therapy or if the use is within the scope of the Agreement for Cooperation. Licenses will be refused in cases where

the material would be put to a use prohibited by the agreement or would not be retained under the jurisdiction of Cuba. The Department of State will be consulted with respect to other cases.

5. A copy of the Commission's Public Announcement is enclosed. There is also enclosed a copy of a Notice of Rule Making which is being sent to the Federal Register for publication.